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DEPARTMENT OF STATE

[Public Notice: 10111]

Procedures With Respect to Presidential Permits Where There Has Been a Transfer of Ownership or Control of a Cross-Border Facility, Bridge, or Border Crossing for Land Transportation, as well as for Name Change of a Permit Holder

AGENCY: Department of State

ACTION: Notice.

SUMMARY: The President of the United States has authority to require permits for transboundary infrastructure projects based on his Constitutional powers over foreign affairs and national security. The Department is issuing this notice to describe the procedures it intends to follow with respect to transfers of ownership or control over cross-border facilities subject to Executive Order 11423, as amended, and Executive Order 13337, as well as changes of name of an entity holding a Presidential permit. This notice supersedes a previous notice, Public Notice 5092 (Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation, 70 FR 30990, May 31, 2005), in its entirety.

FOR FURTHER INFORMATION CONTACT: Marcus Lee, Bureau of Energy Resources, U.S. Department of State, 2201 C St. NW Suite 4422, Washington, D.C. 20520, (202) 485-1522 for issues related to Executive Order 13337; Litah Miller, Bureau of Western Hemisphere Affairs, U.S. Department of State, 2201 C St. NW Suite 6262, Washington, D.C. 20520 (202) 647-9894 for issues related to Executive Order 11423.

SUPPLEMENTARY INFORMATION: On January 24, 2017, the President issued

Executive Order 13766 on Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects in which he set forth the general policy of the Executive Branch “to streamline and expedite, in a manner consistent with law, ... approvals for all infrastructure projects, especially projects that are a high priority for the Nation,” and cited pipelines, bridges, and highways as examples of such high priority projects. The Secretary shares the President’s priorities regarding the expeditious review of infrastructure projects, including pipelines, bridges, and highways. In order to carry out this policy, the Department of State (Department) is undertaking a comprehensive assessment of its Presidential permit application review processes and is issuing this public notice as part of this effort.

The President of the United States requires permits for transboundary infrastructure projects based upon his inherent foreign affairs and national security authority vested in Article II of the Constitution. In Executive Orders 11423 and 13337, acting pursuant to the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, the President delegated to the Secretary of State the authority to receive applications and make determinations regarding approval or denial of Presidential permits for certain types of border facilities upon a national interest determination. The functions assigned to the Secretary have been further delegated within the Department. Because the determination is Presidential action, made through the exercise of Presidentially delegated authorities, the requirements of the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act of 1966, the Endangered Species Act of 1973, the Administrative Procedure Act, and other similar laws and regulations that do not apply to Presidential actions are inapplicable. However,

as a matter of policy, the Department conducts its review of Presidential permit applications in a manner consistent with NEPA.

The Department provides support to the relevant Department decision maker in exercising this delegated Presidential authority with respect to particular applications for new Presidential permits or to the modification, amendment, suspension, revocation, or transfer of existing Presidential permits. For applications made under Executive Order 13337, the Department's Bureau of Energy Resources (ENR) provides such support. For applications made under Executive Order 11423, the Department's Bureau of Western Hemisphere Affairs (WHA) provides such support.

In 2005, the Department issued Public Notice 5092 (Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation, 70 FR 30990, May 31, 2005) to provide guidance regarding the procedures the Department intended to follow where there had been a transfer of an underlying facility, bridge, or border crossing for land transportation for which a Presidential permit had already been issued.

In order to expedite the processing of transfers of infrastructure projects authorized under existing Presidential permits, including those that are a high priority for the Nation, as well as to provide Presidential permit holders and potential transferees with increased transparency regarding the procedures that the Department intends to follow with respect to such requests, the Department is issuing this public notice, which supersedes Public Notice 5092 in its entirety. This notice also clarifies that a request by an existing permit holder limited to changing the name of the entity holding the permit can be processed by the Department in a more expedited manner. The Department reserves the right to

deviate from these procedures in particular cases.

Procedures for Transfers of Ownership or Control of Cross-Border Facilities

1. If the notification to the Department is limited to a change or proposed change in ownership or control of cross-border facilities subject to Executive Order 11423, as amended, and Executive Order 13337, and does not include any other change involving the permitted facilities, an entity seeking to transfer such control or ownership shall provide in writing:

a) A commitment to the Department that it will abide by the relevant terms and conditions of the previously-issued permit;

b) Information identifying the entities and/or persons who will own and/or control the facilities (including details regarding place of incorporation or organization; ultimate ownership; ownership or control by any non-U.S. person; any special arrangements regarding control; and other relevant information);

c) Information concerning its acquisition or proposed acquisition of the relevant facility, bridge, or border crossing from the prior permit holder (including transfer instruments, as relevant); and

d) Any other relevant information concerning its operation of the facility, bridge, or border crossing.

2. The Department will evaluate what further steps it may take, consistent with NEPA, with respect to environmental review of the notified permit transfer in light of the available information. Provided that no information is brought to the Department's attention that the transfer potentially would have a significant impact on the quality of the human environment; the transferee commits to abide by the relevant terms and conditions

of the previously-issued permit; and the transferee further indicates that the operations of the relevant facility, bridge, or border crossing will remain essentially unchanged from that previously authorized, the Department will notify the transferee that it will not conduct an environmental review.

3. The Department will seek the views of other Executive departments and agencies, as appropriate, as to whether the transfer should affect the prior determination by the President, the Secretary, or the Secretary's delegate that resulted in the issuance of the existing permit. If, however, either before or after such interagency consultation the Secretary of State or his delegate determines that the transfer requires a new national interest determination and issuance of a new permit, the Department will process the application in accordance with the procedures for issuance of a new permit set forth in Executive Order 11423, as amended, or Executive Order 13337, as applicable.

Otherwise, the Department will issue a notice in the Federal Register recording the change within 90 days of either the date on which the Department notifies the transferee under paragraph two above or the date on which the Department completes its environmental review.

Procedures for Name Changes of Permit Holder of Cross-Border Facilities

If the notification to the Department is limited to a change in the entity's name and does not include any change in ownership or control of the permitted facilities, or any other change involving the facilities, the procedures listed above are inapplicable and the Department will confirm its receipt of such notification and indicate what information, if any, the Department requires to process the notification as complete. The Department will issue a notice in the Federal Register recording this change within 90 days of

receiving a completed notification.

Further information can be found at the <https://www.state.gov/p/wha/rt/permit/index.htm>.

Judith G. Garber,

Acting Assistant Secretary of

State for Oceans and

International Environmental

and Scientific Affairs

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